



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,254	07/09/2001	Sadik Tuzun	1193-PCTUS00	4185

7590 01/29/2007
CARTER DELUCA FARRRELL & SCHMIDT LLP
446 BROAD HOLLOW ROAD
SUITE 225
MELVILLE, NY 11747

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
----------	--------------

1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

TH

Office Action Summary	Application No.	Applicant(s)	
	09/807,254	TUZUN ET AL.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 24-39,42-47,70-76,78-82,86,91,96-99 and 117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 24-39,42-47,70-76,78-82,86,91,96-99 and 117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413).
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- I. Rejection of claims 24-39,42-47,70-76,78-82,86,91,96-99,117 under 35 USC 112 1st paragraph will not be maintained in light of amendment filed 11/2/06.

Claim Rejections - 35 USC § 112

- II. New Rejection set-forth below.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24-39,42-47,70-76,78-82,86,91,96-99,117 are rejected under 35 U.S.C.

112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

For rejections under 35 U.S.C. 112, first paragraph, the following factors must be considered (In re Wands, 8 USPQ2d 1400, 1404 (CAFC, 1988)):

- 1) Nature of invention.
- 2) State of prior art.
- 3) Quantity of experimentation needed to make or use the invention based on the content of the disclosure
- 4) Level of predictability in the art.
- 5) Amount of direction and guidance provided by the inventor.
- 6) Existence of working examples.
- 7) Breadth of claims.
- 8) Level of ordinary skill in the art.

See below:

1) Nature of the invention.

The nature of the invention is to a method of protecting a plant against pathogenic or parasitic organisms comprising applying to the plant a composition comprising an oil in water emulsion comprising in the oil phase, as an active ingredient, 1 to 1000 ppm essential oil derived from Labiatae and Umbellifera and a bacteria degradable by the essential oil. The nature of the invention is also to a method of repelling or killing insects comprising applying to soil an oil in water emulsion comprising 1 to 1000 ppm essential oil derived from Labiatae and Umbellifera and a bacteria degradable by the essential oil.

3) Quantity of experimentation needed to make or use the invention based on the content of the disclosure.

The quantity of experimentation needed is undue experimentation. One of ordinary skill in the art would have to determine bacteria that are degradable by specific essential oils. Combine the bacteria with the specific essential oil and determine which combinations would be effective in controlling pathogenic or parasitic organisms once applied to the soil or plant. Note bacteria degradable by essential oils are not described in the specification.

6) Existence of working examples.

Specification contains no working examples of a method capable of controlling parasitic or pathogenic organisms using an oil in water emulsion comprising an essential oil and bacteria degradable by the essential oil once applied to a plant or soil.

7) Breadth of claims.

Art Unit: 1616

Claims are extremely broad due to the vast number of possible bacteria and essential oils encompassed by the instant invention for controlling parasitic or pathogenic organisms.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor
Primary Examiner

Application/Control Number: 09/807,254

Page 5

Art Unit: 1616

AU 1616